

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re: JBWI HOMES, LLC,

Debtor.

CASE NO. 20-27616-kmp
CHAPTER 7

NOTICE OF MOTION OF VELOCITY COMMERCIAL CAPITAL, LLC
FOR RELIEF FROM AUTOMATIC STAY

Velocity Commercial Capital, LLC, by its attorneys, Kohner, Mann & Kailas, S.C., has filed papers with the Court to seek relief from the automatic stay and for abandonment. A copy of the Motion is attached.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant relief from the automatic stay, or if you want the Court to consider your views on the motion, then **on or before December 28, 2020**, you or your attorney must:

File with the court a written response explaining your position at:

U.S. Bankruptcy Courts
Eastern District of Wisconsin
517 E. Wisconsin Avenue, Room 126
Milwaukee, WI 53202

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to:

Kohner, Mann & Kailas, S.C.
Attention: Charles Fiergola, Esq.
Washington Building
Barnabas Business Center
4650 North Port Washington Road
Milwaukee, WI 53212-1059

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated this 14th day of December 2020.

KOHNER, MANN & KAILAS, S.C.
Attorneys for Creditor

By: /s/ Charles Fiergola

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re: JBWI HOMES, LLC,

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MOTION OF VELOCITY COMMERCIAL CAPITAL, LLC
FOR RELIEF FROM AUTOMATIC STAY

Now comes Velocity Commercial Capital, LLC (hereinafter “Creditor”), by its attorneys, Kohner, Mann & Kailas, S.C., and seeks an Order of the Bankruptcy Court pursuant to 11 U.S.C. §§ 362 and Fed. R. Bankr. P. 4001, terminating the automatic stay to enable Creditor to enforce its mortgage and judgment of foreclosure against real property located 6770 N. 43rd Street, Milwaukee, WI 53209. In support hereof, Creditor states:

JURISDICTION

1. JBWI Homes, LLC (hereinafter “Debtor”) filed for relief under Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. §101 et seq.) on November 22, 2020. Titania D. Whitten is the Chapter 7 Trustee.
2. This Court has jurisdiction over this proceeding under 28 U.S.C. § 1334, § 157, and the Order of Reference of the District Court; this is a core proceeding under 28 U.S.C. § 157; and venue in this Court is proper under 28 U.S.C. § 1409.
3. This Motion is brought pursuant to Bankruptcy Code §§ 362 and 554 and the Federal Rules of Bankruptcy Procedure 4001, 6007 and 9014.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND FOR ABANDONMENT

4. On May 23, 2018, Debtor executed and delivered to Creditor a Semi-Annual Adjustable Term Note (hereinafter the “Note”) whereby it promised to pay Creditor the principal sum of \$600,000.00.
5. Repayment of the Note was secured by a first Mortgage dated May 23, 2018 and recorded on May 24, 2018, in the Office of the Register of Deeds for Milwaukee County, Wisconsin as Document No. 10779576 on real estate and improvements commonly known as 6770 N. 43rd Street, Milwaukee, WI 53209

(the "Property"). The Note was also personally guaranteed by non-debtor Jonathan Bliss. A copy of the Note and the recorded Mortgage are attached as an Exhibit.

6. The Note is in default. As of December 11, 2020, Debtor is in default for the first payment due under the Note and has failed to make a single payment to Creditor.

7. Prior to the commencement of these proceedings, Creditor commenced a mortgage foreclosure action in the Milwaukee County Circuit Court (Milwaukee Co. Case No. 18-CV-9431). On April 28, 2020, Creditor obtained a judgment of foreclosure of mortgage where it was determined that, pursuant to the terms of the Note and Mortgage, the following sums were justly due and owed to Creditor by Debtor (a copy of the Findings of Fact and Conclusions of Law is attached as an Exhibit):

DEBT:

Principal Balance (as of 1/8/20)	\$600,000.00
Interest (through 1/31/2020)	\$ 92,400.20
Default Interest (through 1/31/2020)	\$ 36,000.00
Escrow Balance	\$ (2,836.03)
Prepayment Penalty	\$ 30,000.00
Late Charges (as of 1/8/2020)	\$ 246.59
Property Inspection Fee (as of 1/8/2020)	\$ 90.00
County Recording Fee	\$ 30.00
Appraisal Fee	\$ 450.00
Building Hazard Insurance	\$ 4,704.00
Real Estate Tax Payments (through 12/31/2019)	\$ 20,189.31
Attorneys' Fees (through 12/31/2019)	\$ 18,660.00
Legal Costs	<u>\$ 1,694.00</u>
TOTAL	\$801,628.07

Interest continues to accrue on the unpaid balance at the rate of 13.24% per annum after January 31, 2020 (regular rate of 9.24% and additional default rate of 4.0%), together with attorneys' fees, costs, expenses and disbursements incurred after December 31, 2019, in connection with enforcing the terms of the Note and the Mortgage, any judgment entered in this case and collecting the indebtedness, which accrued and accruing interest, fees, costs, expenses and disbursements shall continue to be obligations of Debtor to Creditor until paid in full.

8. The Property was scheduled to be sold at public auction on November 23, 2020 but was cancelled after Debtor filed its petition for relief just one day before the sale. A copy of the Notice of Sale is attached as an Exhibit.

9. Debtor has not reinstated or redeemed the property, nor has it made any payments towards the judgment.

10. Since January 1, 2020, Creditor has incurred additional legal fees and costs not included in the above judgment in the amount of \$13,815.61.

11. That interest continued to accrue on the judgment and additional interest in the amount of at least \$59,580.00 is justly due and owing to Creditor by Debtor.

12. Creditor reserves the right to amend the amounts added to the judgment, as additional amounts, including additional interest, are likely due.

13. As of October 7, 2020, the amount owed to the City of Milwaukee for the 2019 City of Milwaukee Real Estate Tax Bill was \$22,355.19, including interest in the amount of \$2,658.98. A copy of the 2019 City of Milwaukee Delinquent Tax Bill is attached as an Exhibit.

14. The tax assessed value of the property per the 2019 City of Milwaukee Combined Property Tax Bill is \$713,300.00. The 2019 City of Milwaukee Combined Property Tax Bill is attached as an Exhibit.

RELIEF REQUESTED

15. Creditor respectfully requests that the Court enter an Order terminating the stay of proceedings under 11 U.S.C. § 362 so as to allow the enforcement of the above-described note, mortgage, and judgment of foreclosure against the Property because the interests of Creditor in the Property are not being adequately protected pursuant to 11 U.S.C. § 362(d)(1) as there is a substantial payment arrearage and Debtor has failed to pay the 2019 City of Milwaukee Real Estate Taxes.

16. Creditor is also entitled to relief pursuant to 11 U.S.C. § 362(d)(2) as neither Debtor nor the estate has any equity in the Property and the Property is not necessary for an effective reorganization of the Debtor or its estate. The tax assessed value of the Property is \$713,300.00. Debtor's schedule sets forth that the appraised value of the Property is \$825,000.00 (*see* Dkt. No. 1, Schedule A/B, Part 9). Even when the

Property is valued at Debtor's valuation, Debtor has no equity in the Property, as Creditor is owed at least \$875,023.68, comprised of Creditor's judgment against Debtor in the amount of \$801,628.07, plus additional legal fees and costs and interest, as set forth above.

17. The Property is burdensome or of inconsequential value and benefit to the bankruptcy estate.

18. Creditor is entitled to adequate protection of the Mortgage and lien in and against the Property. Neither the Debtor nor the Chapter 7 Trustee has offered to and neither will be able to adequately protect said mortgage interest and lien in the Property.

19. Creditor requests that upon entry of an Order granting the Motion, the Creditor shall have the right to take any and all actions with respect to the real property that are available under applicable non-bankruptcy law (i.e. rescheduling, holding, and confirming a sheriff's sale of the Property).

20. Creditor requests that the Court waive the 14-day stay regarding orders granting a motion for relief from automatic stay, as referenced in Federal Rule of Bankruptcy Procedure 4001(a)(3).

WHEREFORE, Creditor requests that the Court enter an Order terminating the stay of proceedings under 11 U.S.C. § 362 and requiring the Trustee to abandon the estate's interest in the Property under 11 U.S.C. § 554, so as to allow Creditor (and its successors and/or assignees) to enforce rights, interests, liens and claims in and against the Property, dated May 23, 2018, recorded on May 24, 2018, in the Office of the Register of Deeds for Milwaukee County, Wisconsin as Document No. 10779576, in accordance with the terms of the above-mentioned loan and security documents, and applicable state law, including but not limited to the foreclosure and sale of the Property and the application of the net sale proceeds of the Property to the indebtedness owed by the Debtor(s); that any Order entered pursuant to this motion be effective immediately upon its entry; and such further relief as is just and equitable.

Dated this 14th day of December 2020.

KOHNER, MANN & KAILAS, S.C.
Attorneys for Creditor

By: /s/ Charles Fiergola
Charles Fiergola
Attorney No. 1099121

Sam Wisotzkey
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